

BALLARD E. SPENCER TRUST, INC.

IBLA 74-309

Decided November 11, 1974

Appeal from rejection of oil and gas lease offer NM 21160.

Affirmed.

1. Oil and Gas Leases: Applications:  
Generally: Drawings

A simultaneously filed oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a serial number of a record in which such statement had previously been filed.

2. Oil and Gas Leases: Applications: Drawings

A first-drawn simultaneous drawing entry card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information.

3. Oil and Gas Leases: Applications:  
Generally: Drawings

A procedure which allows statements of corporate qualifications to be filed after competitive bidding but not after simultaneous noncompetitive drawings is neither arbitrary, nor capricious, nor a denial of equal protection of law.

APPEARANCES: A. J. Losee, Esq., Losee & Carson, P.A., Artesia, New Mexico, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Ballard E. Spencer Trust, Inc. (BEST) filed an oil and gas lease offer by submitting a simultaneous drawing entry card. In the drawing, conducted by the New Mexico State Office on March 6, 1974, the offer of BEST was drawn first for parcel No. 19. By two separate decisions the New Mexico State Office rejected appellant's offer as neither a statement of qualifications to hold the lease nor a reference to a serial number of record in which such qualifications had previously been filed were included with the application as required by departmental regulations, 43 CFR 3112.3-1 and 43 CFR 3102.4-1.

[1, 2, 3] Appellant argues that, in spite of a consistent line of departmental decisions holding otherwise, the Department should allow appellant's application to stand since the Department has allowed applicants for competitive leases to submit statements of qualifications after bids have been opened and the high bidder determined, suggesting that the difference in requirements is arbitrary, unreasonable and a denial of equal protection of the law.

There are, however, different consideration involved in competitive and noncompetitive leases. In the case of noncompetitive leases where drawings are held, it is a matter of indifference to the Government which equally qualified offeror is successful, because the amount of rentals will be the same. Moreover, in most BLM state offices simultaneous filings of noncompetitive oil and gas lease offers are held each month, and some offices regularly process more than 10,000 offers in a single filing for several hundred leases. Processing this volume of offers, conducting the drawings, adjudicating the results, issuing the leases, and preparing the lists of lands for the next month's drawings places a difficult task on BLM employees, and expeditious handling is essential to timely completion of the operation. The requirement of which appellant complains is reasonably calculated to facilitate the orderly handling of such offers. See Mountain Fuel Supply Co., 13 IBLA 85, 87 (1973). As the Court of Appeals for the District of Columbia noted in a case involving drawings for noncompetitive leases:

The history of the administration of the statute furnishes compelling proof \* \* \* that the human animal has not changed, that when you determine to give something

away, you are going to draw a crowd. It is the Secretary's job to manage the crowd while complying with the requirement of Act.

Thor-Westcliffe Development, Inc. v. Udall, 314 F.2d 257, 260 (D.C. Cir. 1963).

By contrast, in a competitive lease sale there is a public interest which is served by affording the high bidder a limited time in which to submit his proof of qualification, as the alternatives are either to accept a lower bid or cancel the sale, whereas in a noncompetitive offering the United States receives the same amount of money regardless of who gets the lease. In addition, competitive lease sales are not scheduled on any regular basis, involve far fewer leases, deal only with potentially productive lands within the known geologic structure of a producing field as distinguished from 'wildcat' noncompetitive leases, attract fewer offerors, and command a much higher remuneration on a per acre basis. More time is available for organizing the sales, conducting the bidding and issuing the leases.

Finally, and perhaps more important than any other consideration, is the right of a qualifying third party offeror to receive a noncompetitive lease. The Mineral Leasing Act specifically provides that lands to be leased noncompetitively must be leased to the first qualified person making application, whereas lands within the known geological structure of a producing oil or gas field shall be leased to the highest responsible qualified bidder. 30 U.S.C. § 226(b)(c) (1970). Under the simultaneous filing procedure for lands to be leased noncompetitively, all offers for the same land are considered to have been filed simultaneously, and priorities are determined by a drawing. If the first drawn offer is not acceptable by reason of some failure to comply with the regulation it cannot be accorded a priority as of the time it was officially filed. The next drawn offer in acceptable form earns priority as of the date and time of the simultaneous filing, and that offeror is first qualified as a matter of law to receive the lease. See 43 CFR 3112.2-1(a)(3); 43 CFR 3112.4-1; McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Duncan Miller, 17 IBLA 267, 268 (1974).

This Department has consistently held that a noncompetitive lease offer which is defective earns no priority on the date of its filing, but where the defect is 'curable' priority is established as of the date the defect is remedied. Kenneth E. Sites,

13 IBLA 276 (1973); William D. Sexton, 9 IBLA 316 (1973); William B. Collins, 4 IBLA 8 (1971); Irwin Rubenstein, 3 IBLA 250 (1971); Celia R. Kammerman, 66 I.D. 255, 263 (1959). <sup>1/</sup>

Under the simultaneous filing procedure it would be utterly pointless to allow the applicant whose defective offer is first drawn additional time to cure the defect, because he could not possibly gain priority over the next drawn offer which was regular on its face. The present procedure requires that three offers be drawn for each parcel. If the first drawn offer is unacceptable for any reason, the second drawn offer gains priority as of the date and time the offers were simultaneously filed. If the second offer is then found to be unacceptable, the third offer gains first priority. If none of the three offers are acceptable as filed, the parcel must be listed for a subsequent simultaneous filing. 43 CFR 3112.5-1.

Again by contrast, in a competitive lease sale priority is not a consideration; it is the qualified high bidder who is entitled to receive the lease. Thus, the Department has held that failure of a high bidder at a sealed bid auction to submit with his bid a statement of his citizenship and interests in other holdings required by regulation and the invitation to bid may be waived where the default has given him no advantage over the other bidder. North American Coal Corp., 74 I.D. 209 (1967).

Therefore, the difference in the two procedures, the different nature of the leases involved in each, the difference in financial remuneration, and the difference in rights accruing to third parties necessitate different considerations of public interest, law, and administrative convenience, and militate in favor of different practices.

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<sup>1/</sup> If this were a situation where the lease offer had been filed "over-the-counter" the defect could be remedied prior to the filing of any junior offer and earn priority as of the time the curative data was filed. Bear Creek Corp., 5 IBLA 202 (1972). However, where the offer has been filed pursuant to the simultaneous filing procedures, as in this case, a defective offer may not be "cured" by the filing of supplemental information after the drawing is held. Texas American Corp., 14 IBLA 217, 219 (1974); cf. William B. Collins, 4 IBLA 8, 10 (1971); 43 CFR 3112.5-1.

For these reasons we adhere to past decisions of this Board requiring offerors of noncompetitive leases to submit statements of qualifications or reference to a serial number of record of previously filed statements or face rejection of the offer. Texas American Corp., 14 IBLA 217 (1974); Silver Monument Minerals, Inc., 14 IBLA 137 (1974); Pan Ocean Oil Corp., 2 IBLA 156 (1971); Love Enterprises, 1 IBLA 248 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Joan B. Thompson  
Administrative Judge

